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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,402	12/30/2003	Josef A. Muff	16632	7545

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DOCKETING DEPARTMENT
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EXAMINER

KRUER, STEFAN

ART UNIT

PAPER NUMBER

3654

DATE MAILED: 08/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/748,402	Applicant(s) MUFF ET AL.	
	Examiner Stefan Kruer	Art Unit 3654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 - 9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 - 9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

Applicant's claim for the benefit of a prior-filed application under 35 U.S.C. 119(e) or under 35 U.S.C. 120, 121, or 365(c) is acknowledged. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 119(e) as follows: formal submittal of a certified copy of the parent application.

If applicant desires to claim the benefit of a prior-filed application under 35 U.S.C. 119(e), a specific reference to the prior-filed application in compliance with 37 CFR 1.78(a) must be included in the first sentence(s) of the specification following the title or in an application data sheet. For benefit claims under 35 U.S.C. 120, 121 or 365(c), the reference must include the relationship (i.e., continuation, divisional, or continuation-in-part) of the applications.

If the instant application is a utility or plant application filed under 35 U.S.C. 111(a) on or after November 29, 2000, the specific reference must be submitted during the pendency of the application and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior application. If the application is a utility or plant application which entered the national stage from an international application filed on or after November 29, 2000, after compliance with 35 U.S.C. 371, the specific reference must be submitted during the pendency of the application and within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) or sixteen months from the filing date of the prior application. See 37 CFR 1.78(a)(2)(ii) and (a)(5)(ii). This time period is not extendable and a failure to submit the reference required by 35 U.S.C. 119(e) and/or 120, where applicable, within this time period is considered a waiver of any benefit of such prior application(s) under 35 U.S.C. 119(e), 120, 121 and 365(c). A benefit claim filed after the required time period may be accepted if it is accompanied by a grantable petition to accept an unintentionally delayed benefit claim under 35 U.S.C. 119(e), 120, 121 and 365(c). The petition must be accompanied by (1) the reference required by 35 U.S.C. 120 or 119(e) and 37 CFR 1.78(a)(2) or (a)(5) to the prior application (unless

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previously submitted), (2) a surcharge under 37 CFR 1.17(t), and (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) or (a)(5) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional. The petition should be addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

If the reference to the prior application was previously submitted within the time period set forth in 37 CFR 1.78(a), but not in the first sentence(s) of the specification or an application data sheet (ADS) as required by 37 CFR 1.78(a) (e.g., if the reference was submitted in an oath or declaration or the application transmittal letter), and the information concerning the benefit claim was recognized by the Office as shown by its inclusion on the first filing receipt, the petition under 37 CFR 1.78(a) and the surcharge under 37 CFR 1.17(t) are not required. Applicant is still required to submit the reference in compliance with 37 CFR 1.78(a) by filing an amendment to the first sentence(s) of the specification or an ADS. See MPEP § 201.11.

Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Switzerland on 2 July 2001. It is noted, however, that applicant has not formally filed a certified copy of the PCT/CH02/00624 application as required by 35 U.S.C. 119(b).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 – 3, 5- 6 and 8 - 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thielow et al (US 6,381,917) in view of Yoshikatsu et al (US 5,165,505).

In reference to the claim language referring to the heating whereby the front wall curves and the back wall retains the rearward door gap unchanged, intended use and other types of functional language must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. In re Casey, 152 USPQ 235 (CCPA 1967); In re Otto, 136 USPQ 458, 459 (CCPA 1963).

Re: Claims 1, 5 and 8, Thielow et al disclose a shaft door (1, Fig. 1) with a closing edge (14), wherein the door panel includes a front wall (2) and a back wall (3), which walls are spaced apart and connected together by thermally releasable means (Col. 1, Line 43); however, Thielow et al do not disclose a profile member fastened to the back wall of the door panel.

Yoshikatsu et al teach a pair of door panels (Fig. 1) each having a profile member (28, Fig. 2 and 3) thermally non-detachably fastened (Col. 5, Lines 18 and 36, and Col. 7, Line 18) to the back wall and forming a rearward portion of the closing edge of the door panel as well as a portion of the front wall (region of 29, 21, 24A and 30, Fig. 3) forming a forward portion of the closing edge of the door panel, said profile member forming a rearward door gap with an adjacent closing edge when the door is in a closed state, and said gap remaining unchanged due to a heating/expansion of the front wall.

It would have been obvious to one of ordinary skill in the art to modify the invention of Thielow et al with the teaching of Yoshikatsu et al to afford the means of channeling smoke for its capture and ventilation, for the safety of occupants in a shaft.

Re: Claim 2, Yoshikatsu et al teach said profile member configured to form said rearward door gap with an adjacent closing edge of an opposite door panel (Fig. 3).

Re: Claim 3, Yoshikatsu et al teach a forward door gap and a rearward door gap having lateral positions different with respect to one another (Fig. 3).

Re: Claim 6, Yoshikatsu et al teach a forward door gap and said rearward door gap having positions different with respect to one another (Fig. 3).

It would have been obvious to one of ordinary skill in the art to modify the invention of Thielow et al with the teaching of Yoshikatsu et al, as reviewed in Claims 2, 3 and 6, in keeping with a means of channeling smoke for its capture and ventilation, for the purpose of occupant safety and isolating environments to facilitate recovery.

Claims 4 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thielow et al in view of Yoshikatsu et al, as applied to Claims 3 and 6 respectively, and in further view of Pelvilain (US 5,293,962).

The invention of Thielow et al lacks the door gaps of the instant invention and Yoshikatsu et al teach a rearward and forward door gap, yet the door gaps extend parallel to one another. Furthermore, Yoshikatsu et al are silent regarding a door gap crossing an axis of symmetry of the respective door panels.

Pelvilain, however, teaches his door gaps (Fig. 2) of oblique orientation to one another and crossing the axis of symmetry of his door panels (29 and 24), to derive the feature of his "...second hollow space 32...", which "...serves as a chimney when the doors are closed." (Col. 3, Line 8).

It would have been obvious to modify the invention of Thielow et al with the teaching of Yoshikatsu et al, as furthered by Pelvilain, to further the beneficial venting of smoke for the safety of occupants in the shaft.

With respect to Claim 9, though neither of the inventions of the aforementioned claims disclose a stationary door post for engagement of a single door panel, it would have been obvious to one of ordinary skill in the art to provide said post of design to provide the desired ventilation effects of the teaching of Yoshikatsu et al teach as furthered by Pelvilain, in as much as the mating portions of the engaging members are operationally identical whether one or both of said members are slidably movable.

Response to Arguments

Applicant's arguments filed 19 July 2006 have been fully considered but they are not persuasive.

The applicant claims priority to a European patent filed on 2 July 2001 through a PCT application filed on 25 June 2002 in Switzerland for which this application is to be a continuation. The applicant has referenced the rules governing the National Stage Applications filed under 35 U.S.C. 371, which are not applicable to his application in that it is filed under U.S.C. 365(c).

An excerpt of the rules governing the latter is as follows:

(c) In accordance with the conditions and requirements of section 120 of this title, an international application designating the United States shall be entitled to the benefit of the filing date of a prior national application or a prior international application designating the United States, and a national application shall be entitled to the benefit of the filing date of a prior international application designating the United States. If any claim for the benefit of an earlier filing date is based on a prior international application which designated but did not originate in the United States, the Director may require the filing in the Patent and Trademark Office of a certified copy of such application together with a translation thereof into the English language, if it was filed in another language.

In response to applicant's arguments, the prosecution as detailed in the previous office action was in response to the claim language.

Thielow et al discloses a fire retardant door having thermally releasable panels for the purpose of reducing warping due to fire. Yoshikatsu et al teach the thermally expansive means to block the gap while the gap, as well as the rear wall, substantially maintain their forms.

With respect to Pelvilain, the teaching for oblique orientation of the front and rear gaps is made. The rear gap crosses an axis of symmetry of the front doors, as evident by the jutting, angular extension of the right, rear door element.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

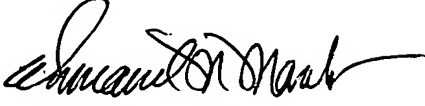
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stefan Kruer whose telephone number is 571.272.5913. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kathy Matecki can be reached on 571.272.6951. The fax phone number for the organization where this application or proceeding is assigned is 571.273.8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866.217.9197 (toll-free).

SHK

31 July 2006


EMMANUEL MARCELO
PRIMARY EXAMINER